

Item No. 16 H

TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Stuart Dodd

Department Submitting Request

Dept Head's Signature

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> Nov 10, 2009	Oct. 30 (5:00 p.m.)	<input type="checkbox"/> Jan 26, 2010	Jan 15 (5:00 p.m.)	<input checked="" type="checkbox"/> March 23, 2010	Mar 12 (5:00 p.m.)
<input type="checkbox"/> Dec 1, 2009	Nov 20 (5:00 p.m.)	<input type="checkbox"/> Feb 9, 2010	Jan 29 (5:00 p.m.)	<input type="checkbox"/> April 13, 2010	April 2 (5:00p.m.)
<input type="checkbox"/> Dec 8, 2009	Nov 25 (5:00 p.m.)	<input type="checkbox"/> Feb 23, 2010	Feb 12 (5:00 p.m.)	<input type="checkbox"/> April 27, 2010	April 16 (5:00p.m.)
<input type="checkbox"/> Jan 12, 2010	Dec 31 (5:00 p.m.)	<input type="checkbox"/> Mar 4, 2010	Feb 19 (5:00p.m.)	<input type="checkbox"/> May 11, 2010	April 30 (5:00p.m.)

NATURE OF AGENDA ITEM

- | | | |
|---|---|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> New Business |
| <input type="checkbox"/> Report | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Manager's Report |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Attorney's Report |
| <input type="checkbox"/> Bids | <input type="checkbox"/> Old Business | <input type="checkbox"/> Other |

EXPLANATION:

Discussion and or action on the Senior Center contract and agreement

STAFF RECOMMENDATION:**BOARD/COMMITTEE RECOMMENDATION:****FISCAL IMPACT AND APPROPRIATION OF FUNDS:**

- | | |
|---|--|
| <input type="checkbox"/> Amount \$ _____ | <input type="checkbox"/> Acct # _____ |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____ |
| <input type="checkbox"/> Bid | <input type="checkbox"/> Grant <input type="checkbox"/> Amount represents matching funds |

___ Copy of contract and agreement requested as back-up material

Town Attorney review required

☐ Yes ☒ NoTown Manager's Initials: 92

SERVICE AGREEMENT
SENIOR CENTER

THIS IS AN AGREEMENT, made this 10th day of November 2009, by and between:

THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, a municipal corporation organized and operating under the laws of the State of Florida, hereinafter referred to as "TOWN"

AND

Bien-Aime, Inc., corporation authorized to do business in the State of Florida, hereinafter referred to as Contractor.

WITNESSETH:

WHEREAS, the TOWN and Contractor have determined that it is in the best interest of the parties to jointly create, operate and fund a senior center ("Senior Center") in order to help address the social and recreational needs of the senior, youth and community residents of the TOWN; and

WHEREAS, the TOWN and Contractor agree to enter into this Service Agreement to provide services, operate the center and monitor and evaluate the success of such services;

NOW THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between the TOWN and Contractor as follows:

1.0 Recitals. The above recitals are true and correct and are hereby incorporated herein.

2.0 Services and Responsibilities of Contractor

2.1 Contractor agrees to create and operate a Senior Center in the TOWN to be operated at Jarvis Hall, the TOWN card room, and other TOWN locations, as they may be available, for the benefit of the citizens and residents of the TOWN. It is recognized and agreed by the parties that such programming shall be a gradual process that will develop according to the requests of participants and the identification of appropriate volunteers.

2.2 Contractor shall undertake the following responsibilities:

2.2.1 Hire and train the Senior Center Manager and volunteers. In connection therewith, Contractor shall maintain a daily sign-in sheet attached hereto as Exhibit "B" and current addresses and phone numbers relating to all volunteers that provide services hereunder. A cumulative monthly report shall be provided to TOWN reflecting this information for the preceding month.

2.2.2 Provide direct on-going management and supervision of the Senior Center Manager as well as all other necessary administrative support.

2.2.3 Provide all support services necessary for the operation and administration of the Senior Center, including, but not limited to human resources, marketing, and accounting support.

2.2.4 Assist in the promotion of positive media coverage for the Senior Center and the TOWN.

2.3 Contractor shall identify the interests and needs of the senior, youth and community residents of the TOWN and develop programs to fulfill those needs.

2.4 Contractor shall develop services and activities that will allow seniors to continue to maintain a physically active, emotionally stable, intellectually challenged and socially enriched lifestyle based upon their personal interests and abilities. Programs shall utilize the talents and past experiences of seniors or others willing to volunteer their time, for the benefit of their neighbors.

2.5 Contractor shall promote an awareness of existing services for seniors that may be available and shall assist seniors to obtain such needed services as may be available to them through Federal, State and County programs.

2.6 Contractor shall provide computers and computer desks to be used for computer classes which shall be offered by the Senior Center. Contractor shall also provide and manage special activities held by the Senior Center, including, but not limited to functions such as socials.

2.7 Contractor shall provide monthly progress reports to the TOWN Manager, or his or her designee. Contractor shall also provide additional reports to the TOWN Commission and Administration as requested.

2.8 Contractor shall provide the funding for all office supplies used in the Senior Center office.

2.9 Contractor shall identify, apply for and make best efforts to obtain grant funds for Senior Center activities.

3.0 Services and Responsibilities of TOWN.

3.1 The TOWN shall make available for use by the Senior Center existing space at Jarvis Hall, the TOWN's Card Room and other facilities and locations, such as the tennis and shuffleboard courts, and swimming pool that are not otherwise reserved for scheduled activities by other parties.

3.2 In order to coordinate the use of the TOWN's facilities, TOWN hereby designates the TOWN Manager, or her designee, as the Project Coordinator for the duration of this Agreement, unless otherwise substituted at the sole discretion of the TOWN Manager. The Project Coordinator shall receive progress reports from Contractor regarding the success of the Senior Center and shall monitor the success and utilization of the Senior Center by the residents of the TOWN.

3.3 The TOWN agrees to provide funding for the term of this Agreement not to exceed ~~\$5,750~~ to be disbursed in equal monthly payments of ~~\$4,812.50~~ on the first business day of each month during which services are rendered. Contractor shall provide a staff person who shall be and remain an employee of Contractor and shall not be an employee of the TOWN. The TOWN shall

provide office space for use by such staff person, including the use of a telephone line. The size, location and other details of the office space shall be solely within Town's discretion.

3.4 The TOWN shall be reimbursed by Contractor for costs and expenses of TOWN resources provided to assist with production and distribution of promotional materials, such as advertisements in "Town Topics." Reimbursement shall be at market rates.

3.5 Contractor shall submit a budget to the TOWN on or before June 1, 2010 so the TOWN may consider continuing the Senior Center for the Fiscal Year 2010/2011. Upon review and approval of such budget by the TOWN, the TOWN shall continue to provide funds for the purposes enumerated herein.

3.6 The TOWN and Contractor agree to cooperate in each other's efforts to operate and manage the Senior Center, including, but not limited to, providing any information necessary in order to obtain available grant funds for the operation of the Senior Center.

4.0 Term and Termination.

4.1 This Agreement shall take effect as of the date of execution, hereinafter the "Effective Date," however, the term of this Agreement shall commence as of October 1, 2009, hereinafter referred to as the "Commencement Date," and continue for a term of twelve (12) months, until September 30, 2010. This Agreement may be renewed upon the mutual consent of the parties.

4.2 It is the intent of the parties to continue to provide the developed services and activities provided by the Senior Center. However, the parties mutually agree and understand that there is no guarantee of funding by either party. Continued services is dependent on the availability of funding and on successful utilization of the Senior Center and services.

4.3 This Agreement may be terminated by either party for convenience, upon written notice to the other party. Upon receipt of such notice, the Agreement shall be terminated at the end of the next full calendar month subsequent to the month in which the notice was received in order to allow for the completion of scheduled activities and proper feedback to volunteer instructors and participants.

5.0 Liability Insurance.

5.1 Contractor shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and evidence of such insurance has been provided to and approved by the TOWN. All subcontractors of Contractor must also provide evidence of insurance to the Town before providing any services. No subcontractor may provide any services hereunder unless approved in advance by Town.

5.2 Certificates of insurance, reflecting evidence of the required insurance listed below, shall be filed with the TOWN prior to the commencement of services hereunder. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

5.3 Financial Ratings of the insurance company must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

5.4 Insurance shall be in force until the termination of this Agreement and any subsequent renewals hereof. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. Contractor shall not continue work pursuant to this Agreement unless all required insurance remains in full force and effect.

5.5 Contractor shall obtain comprehensive general liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- a. Bodily Injury
 - 1. Each Occurrence \$1,000,000
 - 2. Annual Aggregate 1,000,000
- b. Property Damage
 - 1. Each Occurrence 1,000,000
 - 2. Annual Aggregate 1,000,000
- c. Personal Injury
 - Annual Aggregate 1,000,000

5.6 Contractor shall obtain workers compensation insurance during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, Contractor shall require the subcontractors similarly to provide workers compensation insurance for all employees. The following limits must be maintained:

- A. Workers Compensation Statutory
- B. Employer's Liability \$ 500,000 per occurrence

5.7 Comprehensive Auto Liability

- A. Bodily Injury
 - 1. Each Occurrence 1,000,000
 - 2. Annual Aggregate 1,000,000
- B. Property Damage
 - 1. Each Occurrence 1,000,000
 - 2. Annual Aggregate 1,000,000

Coverage shall include owned, hired, and non-owned vehicles.

5.8 A blanket fidelity bond (employee dishonesty bond) is not required of Contractor unless Contractor has employees. In such event, Contractor, at its sole cost and expense, shall obtain a blanket fidelity bond for each and every employee who is engaged by Contractor and made responsible in any manner by Contractor for the exercising or carrying out the duties under this Agreement. The bond shall be with a surety company authorized to do business in Florida and shall be in the amount of no less than three hundred fifty thousand dollars (\$350,000.00) for each person performing the duties of Contractor. The bond shall be conditioned upon the proper safeguarding of the monies and property for which the person has supervision, custody, or control. The bond shall further be subject to approval by the TOWN.

5.9 Contractor shall hold the TOWN, its agents, and employees, harmless on account of claims for damages to persons, property, or premises arising out of the operations to complete this Agreement and Contractor shall name the TOWN as an additional insured under their policies.

5.10 The TOWN reserves the right to require any other insurance coverage it deems necessary depending.

6.0 Protection of TOWN's Property.

6.1 All parties hereto understand and agree that the TOWN is self insured and does not intend to purchase insurance in connection with this Agreement.

6.2 At all times during the performance of this Agreement, Contractor shall protect the TOWN's property from all damage whatsoever on account of the work being carried on under this Agreement.

7.0 Indemnification.

7.1 Contractor agrees to release the TOWN from and against any and all liability and responsibility in connection with the performance of this Agreement and any acts or omissions hereunder. Contractor further agrees not to sue or seek any money or damages from the TOWN in connection with the above-mentioned matters.

7.2 Contractor agrees to indemnify, defend and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from the CONSULTANT's negligent acts, errors, or omissions relating to the performance of this Agreement or any acts or failure to act in relationship thereto.

7.3 The parties recognize that various provisions of this Agreement, including, but not necessarily limited to this Section, provide for indemnification by Contractor and that Florida Statute §725.06 requires a specific consideration be given therefore. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the parties understand and agree

that the covenants and representations relating to this indemnification provision shall survive after the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

8.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that Contractor is an independent contractor under this Agreement and not the TOWN's employee for any purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor activities and responsibilities hereunder. All administrative procedures applicable to services rendered under this Agreement shall be those of Contractor and shall not conflict with the TOWN, H.U.D., or any United States policies, rules or regulations or conflict with any applicable statute, rule or law. Contractor agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between Contractor and the TOWN and the TOWN will not be liable for any obligation incurred by Contractor, including, but not limited to, unpaid minimum wages and/or overtime premiums.

9.0 Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

10.0 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the Contractor and the TOWN designate the following as the respective places for giving of notice:

TOWN: Esther Colon, Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 776-0576
Fax: (954) 776-1857

COPY TO: Susan L. Trevarthen, Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Phone: (954) 763-4242
Fax: (954) 764-7770

CONTRACTOR: _____

11.0 Ownership. The parties agree that all items, equipment, property and materials owned or purchased by Contractor and provided under this Agreement shall remain the property of Contractor. The parties further agree that all items, equipment, property and materials owned or purchased by the TOWN and provided under this Agreement shall remain the property of the TOWN. Each party agrees to safeguard the other's property and to return such property in the same condition as provided, subject to ordinary wear and tear.

12.0 Assignments. Neither this Agreement nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstance by Contractor without the prior written consent of the TOWN. For purposes of this Agreement, any change of ownership of Contractor shall constitute an assignment which requires TOWN approval.

13.0 Records. Contractor shall keep accurate and complete books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct entries as to personnel hours provided hereunder, and any expenses for which Contractor expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by the TOWN and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by TOWN of any fees or expenses based upon such entries.

14.0 Public Records. Pursuant to Chapter 119, Florida Statutes, Florida's Public Records laws, Contractor shall maintain and make available for inspection any and all business records generated pursuant to this Agreement as required by law.

15.0 No Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

16.0 Default. For the breach or violation of any provision hereunder, the TOWN shall have the right to terminate the Agreement by written notice without further liability to TOWN and at its discretion, to deduct from the Agreement price, or otherwise recover the full amount expended by Town to cure any such breach or violation.

17.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

18.0 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19.0 Headings. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

20.0 Contractor Compliance. CONTRACTOR acknowledges a certain agreement ("Funding Agreement") between TOWN and Broward County relating to partial funding of the Senior Center. CONTRACTOR agrees at all times during performance under this Agreement to adhere and comply with all terms and provisions of the Funding Agreement, including, by example and not limitation, all requirements in the Funding Agreement relating to "subgrantee" and any contractors of subgrantee. The Funding Agreement is attached hereto as Exhibit "A" and incorporated herein for all purposes. The TOWN's Invitation to Bid for Lauderdale-By-The-Sea Recreational and Senior Center Services and CONTRACTOR'S response thereto are incorporated herein for all purposes and also made a part of this Agreement. All work provided by CONTRACTOR shall be performed in a professional first class manner and form as required by all applicable Federal, State, and local rules, regulations, laws, codes, and ordinances, and in accordance with the this Agreement, including, by example and not limitation, in accord with the documents referenced herein.

21.0 Waiver. Failure of the TOWN to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

22.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

23.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

24.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

25.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the TOWN and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

26.0 Attorney's Fees. In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

N. B. Smith Deputy BY: Roseann Minnet
June White, Town Clerk Clerk Mayor Roseann Minnet

APPROVED AS TO FORM:

Commission Approval: November 10, 2009

Susan L. Trevarthen
Susan L. Trevarthen, Town Attorney

CONTRACTOR:

Karen Gates
Witness Signature
Karen Gates
Print Witness Name

BY: Armilio Bien-Aime
Contractor Signature
ARMILIO BIEN-AIME
Print Contractor Name

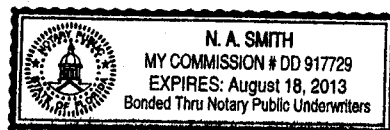
STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

BEFORE ME, an officer, duly authorized by law to administer oaths and take acknowledgments, personally appeared Armilio Bien-Aime as President, of Florida an organization authorized to do business in the State of Florida, and acknowledged and executed the foregoing Agreement as the proper official of Florida for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 18th day of November, 2009.

N. B. Smith
NOTARY PUBLIC

My Commission Expires:



Attached are Exhibits A, B, C, and D.

Exhibit A

Agreement between Broward County and Town of Lauderdale-By-The-Sea

35th YEAR CDBG GOVERNMENTAL ENTITY FORM

AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF LAUDERDALE-BY-THE-SEA

for

SENIOR CENTER ACTIVITIES AND OPERATION

IN THE AMOUNT OF \$24,275

PROVIDING FOR FUNDING AND ADMINISTRATION OF
35th YEAR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

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EXHIBITS

EXHIBIT "A"	PROJECT DESCRIPTION
EXHIBIT "B"	COSTS/BUDGET FOR PROJECT
EXHIBIT "C"	TIMETABLE/PROJECT SCHEDULE
EXHIBIT "D"	MONTHLY PROGRESS REPORT
EXHIBIT "E"	SUBGRANTEE'S REQUEST FOR PAYMENT

AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF LAUDERDALE-BY-THE-SEA

for

SENIOR CENTER ACTIVITIES AND OPERATION

IN THE AMOUNT OF \$24,275

PROVIDING FOR FUNDING AND ADMINISTRATION OF
35TH YEAR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

This is an Agreement between: BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

TOWN OF LAUDERDALE-BY-THE-SEA, a municipal corporation of the State of Florida, its successors in interest, hereinafter referred to as "SUBGRANTEE."

WITNESSETH, that, for and in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and SUBGRANTEE agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 Assurances: means those assurances made by SUBGRANTEE to COUNTY as specifically set forth in this Agreement.
- 1.2 Broward County Community Development Block Grant Program or Program: means the Community Development Program applied for by Broward County and awarded by the United States Department of Housing and Urban Development as authorized pursuant to Title I, Housing and Community Development Act of 1974, Public Law 93-383, as amended.
- 1.3 CDBG Funds: means the Community Development Block Grant Funds; the monies given to SUBGRANTEE pursuant to the terms of this Agreement.
- 1.4 COUNTY: means Broward County, Florida, a political subdivision of the State of Florida.
- 1.5 Davis-Bacon: means the prevailing wage rate as determined by the Secretary of Labor to be paid laborers and mechanics working on projects of Two Thousand Dollars (\$2,000.00) or more.
- 1.6 Division: means the Housing Finance and Community Development Division of Broward County.

- 1.7 H.U.D.: means the United States Department of Housing and Urban Development.
- 1.8 Project: means the Project(s) set forth in Article 3 hereof, and Exhibit "A" entitled Project Description.
- 1.9 Rules and Regulations of H.U.D.: means 24 C.F.R. 570, "Community Development Block Grant Regulations"; 24 C.F.R. 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Government"; OMB Circular A-87, "Cost Principles for State and Local Governments"; OMB Circular A-133, "Audits of State and Local Governments"; copies of which are incorporated herein by reference.
- 1.10 SUBGRANTEE: means TOWN OF LAUDERDALE-BY-THE-SEA, a municipality as subgrantee for the Project described in this Agreement.

ARTICLE 2 - PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Title I of the Housing and Community Development Act of 1974, P.L. 93-383, consolidated several existing categorical programs for community development into a single program of Community Development Block Grants ("CDBG") for the purpose of allowing local discretion as to the determination of needs and priorities for a community development program. The needs and priorities of community development in Broward County were determined through consultation with representatives of the community participating in the Broward County Community Development Block Grant Program.
- 2.2 Pursuant to 24 C.F.R. 570.200(a) and 570.301 of the Rules and Regulations of H.U.D., the Project was included in the Broward County Community Development Block Grant Program submission to H.U.D. It was determined that the proposal funded under this Project will address one (1) or more of the following three (3) national objectives.
- 2.2.1 Activities benefiting a majority (at least 51%) of low and moderate-income persons in primarily residential areas, including:
- a) Area benefit activities (uniform emergency telephone numbers system, payment of special assessments, qualifying activities in areas that are either a Federally-designated Empowerment Zone or Enterprise Community);
 - b) Limited clientele activities (at least 51% of whom are low and moderate income, abused children, battered spouses, elderly persons, those "severely disabled," homeless, illiterate, persons living with AIDS, and migrant and farm workers; activities that serve to remove material or architectural barriers to the mobility or accessibility of elderly persons or those "severely disabled"; a micro enterprise related assistance activity; a qualified activity designed to provide job training and placement and/or other employment and support services);
 - c) Housing activities carried out for providing or improving permanent residential structures; and
 - d) Job creation or retention activities designed to create or retain permanent jobs.

- 2.2.2 Activities which aid in the prevention or elimination of slums or blight based on varied criteria including, but not limited to, meeting the definition of a slum, blighted, or deteriorated area under State or local law, the documented presence of a number of deteriorated buildings or public improvements, addressing the conditions which contributed to the deterioration, rehabilitation to eliminate specific conditions detrimental to public health and safety, those activities which address prevention or elimination of slums or blight in an urban renewal areas.
- 2.2.3 Activities designed to meet community development needs having a particular urgency if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious threat to the health or welfare of the community, are of recent origin, the recipient is unable to finance the activity on its own, and that other sources of funding are not available.
- 2.3 Under the Rules and Regulations of H.U.D., COUNTY is the administrator for the Program and COUNTY is mandated to comply with various statutes, rules and regulations of the United States and the Rules and Regulations of H.U.D., as to the allocation and expenditure of funds as well as protecting the interests of certain classes of individuals who reside in Broward County, Florida.
- 2.4 COUNTY is mandated by H.U.D. to conduct all programs and activities relating to housing and community development in a manner which will affirmatively further fair housing. COUNTY will fund only those subgrantees who have taken steps to promote fair housing.
- 2.5 COUNTY is desirous of disbursing the funds to SUBGRANTEE. However, as administrator for the Program, COUNTY has obtained assurances from SUBGRANTEE that it will comply with the statutes, rules and regulations of the United States, the Rules and Regulations of H.U.D., the State of Florida, and applicable codes and regulations of COUNTY relating to the Project and the Program, as a condition precedent to the release of such funds to SUBGRANTEE.
- 2.6 Any SUBGRANTEE found to be taking actions designed to discourage affordable housing for sale or rent within the confines of Broward County is not eligible to receive CDBG Funds.
- 2.7 This Agreement is subject to the availability of funds as more specifically described in Articles 4 and 9 hereof.

ARTICLE 3 – PROJECT

- 3.1 SUBGRANTEE agrees to provide and implement the following eligible Project:

SENIOR CENTER ACTIVITIES AND OPERATION

This Project was submitted and approved in the 35th year grant process. Such Project is more specifically described and set forth in Exhibit "A," attached hereto and made a part hereof. If this Project is to be constructed, provided, located, or implemented on SUBGRANTEE's property, SUBGRANTEE shall assume all liability for same upon completion of the Project.

- 3.2 SUBGRANTEE agrees to implement the Project and comply with the Timetable/Project Schedule set forth in Exhibit "C," attached hereto and made a part hereof. Failure to maintain the implementation schedule within sixty (60) days of the deadlines identified in Exhibit "C" may warrant a full review by the Division's staff to meet H.U.D.'s required expenditure rates for the Program year. Such referral may be the first step toward possible reprogramming of funds. Failure to maintain the implementation schedule within ninety (90) days of the deadlines may be cause for a recommendation from the Division that all uncommitted and unexpended funds be transferred to the contingency account or be reprogrammed consistent with the Housing and Community Development Act of 1974, as amended.

- 3.3 All specifications and plans prepared or to be used for the Project shall be certified and approved by SUBGRANTEE and submitted to the Division for approval prior to advertisement or implementation as applicable.
- 3.4 The Division may issue a Stop Order to SUBGRANTEE which shall halt all work on the Project in the event that the work is not being done according to specifications or when, in the Division Director's judgment, SUBGRANTEE or its contractor have violated federal guidelines and regulations, the Assurances contained in Article 6, or the provisions of this Agreement.
- 3.5 SUBGRANTEE agrees that the Division will carry out periodic monitoring and evaluation activities as determined necessary by the Division. The continuation of this Agreement is dependent upon satisfactory evaluation conclusions. Such evaluation will be based on the terms of this Agreement, comparisons of planned versus actual progress relating to Project(s) scheduling, budgets, in-kind contributions and output measures. Upon request, SUBGRANTEE agrees to furnish to the Division Director, COUNTY or their designees, such records and information, including copies and/or transcriptions, as is determined necessary by the Division Director or COUNTY. SUBGRANTEE shall submit on a monthly and quarterly basis, and at other times upon the request of the Division Director, information and status reports required by Division, COUNTY or H.U.D. on forms approved by the Division Director.

[] Check if Section 3.6 is applicable. If not, skip to Section 3.16.

- 3.6 If SUBGRANTEE's Project involves any construction, renovation or remodeling and design professionals and/or contractors will be hired to complete the Project, the following shall apply:

3.6.1 SUBGRANTEE shall provide COUNTY with a copy of all contracts and correspondence between SUBGRANTEE and any design professionals to complete the Project. The design professional's service shall include civil, structural, mechanical and electrical engineering and architectural services, as applicable for the Project, including all necessary, incidental and related activities and services required by the Project's scope and contemplated in the professional's level of effort.

3.6.2 SUBGRANTEE shall provide COUNTY with a copy of all contracts and correspondence between SUBGRANTEE and any contractors to complete the Project. The contractor's service shall include, but not be limited to, labor, materials, equipment and other services necessary to perform all of the work described in the Contract Documents for the construction of the Project in accordance with the requirements and provisions of the codes as defined by plan review incident to permitting. The Scope of Work also includes all Project site preparations (pre-inspection, examination, tests and borings, and discovery of the site conditions and other similar activities.

3.6.3 COUNTY shall reimburse SUBGRANTEE for its design expenditures upon completion of each design phase more particularly described in the Project Schedule, which shall include, but not be limited to, Schematic Design, Design Development and Contract Documents. At the conclusion of each phase, SUBGRANTEE shall provide the associated deliverable and shall submit an invoice for payment.

a) Schematic Design

The design professional shall prepare and submit for approval by the Division Director, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Additionally, the design professional shall submit a written Statement of Probable Construction Cost based on current area, volume or other unit costs. The design professional must research all applicable codes, ordinances, rules, regulations and requirements of governmental authorities having jurisdiction over the Project.

b) Design Development

The design professional shall prepare the Design Development Documents consisting of drawings and other documents describing the size and character of the entire Project, including architectural, structural, mechanical, and electrical systems, materials and such other essentials as may be appropriate. The design professional shall consider the availability of materials, equipment and labor, construction sequencing and scheduling, economic analysis of construction and operations, user safety and maintenance requirements and energy conservation.

The Design Development Documents shall consist of, but not be limited to, the following:

1. Expansion of the architectural, structural, mechanical and electrical Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through appropriate: Plans, sections and elevations, typical construction details, three dimensional sketches; basic materials and finishes; equipment and furniture layouts and space requirements; basic structural system and dimensions; energy conservation measures; outline specifications; basic selection of mechanical and electrical equipment and their capabilities;
2. Development scheduling services consisting of reviewing and updating previously established schedules; and
3. Written Statement of Probable Construction Cost consisting of updating and refining the Schematic Design Phase Statement of Probable Construction Cost.

c) Contract Documents

The design professional shall prepare from the approved Design Development Documents the working drawings and specifications setting forth in detail and prescribing the work to be done, the materials, quality of work, finishes and equipment required for the architectural, structural, mechanical and electrical work and the necessary bidding information (collectively referred to as the "Contract Documents"). The design professional shall, in the preparation of the drawings and specifications, take into account all prevailing codes and regulations governing construction in Broward County. Work tasks to accomplish this include but are not limited to the following: prepare drawings and specifications for construction; update and revise the Probable Construction Costs.

The Contract Documents shall be sufficiently complete and include sufficient detail to permit issuance of a building permit and responsive bids obtained.

- 3.7 No construction work may be undertaken by SUBGRANTEE without written authorization from the Division prior to issuance of COUNTY's Notice to Incur Costs.
- 3.8 All change orders must receive prior written approval from the Division.
- 3.9 At the completion of each Project, "as-built" drawings, when necessary, shall be submitted to the Division for approval prior to final payment.
- 3.10 COUNTY shall reimburse SUBGRANTEE for its construction expenditures pursuant to the Project

Schedule, which shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the Project. The contractor shall plan, record, and update, at least monthly, the Project's construction schedule.

- 3.11 At no time shall COUNTY distribute grant funding where SUBGRANTEE has not provided the required deliverable.
- 3.12 In the event SUBGRANTEE is unable to complete the Project because of delays resulting from untimely review by COUNTY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of SUBGRANTEE, COUNTY shall grant a reasonable extension of time for completion of the services without additional funding. It shall be SUBGRANTEE's responsibility to notify COUNTY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform COUNTY of all facts and details related to the delay.
- 3.13 SUBGRANTEE shall submit invoices for reimbursement of construction expenditures which are identified by the specific project number in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Invoices for each phase shall not exceed the amounts allocated to that phase. The invoice shall show a summary of fees with accrual of the total and credits for portions paid previously.
- 3.14 COUNTY shall pay SUBGRANTEE within thirty (30) calendar days from receipt of SUBGRANTEE's invoice for reimbursement of construction expenditures, as defined by COUNTY's Prompt Payment Ordinance, ninety percent (90%) of the total shown to be due on such invoice. When the services to be performed on each phase of the Project are fifty percent (50%) complete and upon written request by SUBGRANTEE, COUNTY shall assess whether the Project is progressing in a satisfactory manner, in its sole discretion, and may authorize that subsequent payments for each phase may be increased to ninety-five percent (95%) of the total shown to be due on subsequent statements.
- 3.15 Upon SUBGRANTEE's satisfactory completion of each construction phase and after COUNTY's review and approval, COUNTY shall remit to SUBGRANTEE the ten percent (10%) or five percent (5%) portion of the amounts previously withheld. Final payment for the Project may be approved by the Director of the Broward County Purchasing Division.
- 3.16 SUBGRANTEE agrees to meet with COUNTY at reasonable times and with reasonable notice to discuss the Project.
- 3.17 SUBGRANTEE shall meet or exceed the standards described in the Project Description attached hereto as Exhibit "A," if applicable, and all applicable codes, ordinances, statutes and any other regulations imposed by any regulatory body or authority governing the design and construction.
- 3.18 Time is of the essence throughout this Contract. The total Project shall be completed by SUBGRANTEE and ready for final payment no later than one of the following:
- ☐ 365 calendar days from the date of COUNTY's issuance of the Notice to Incur Costs, or
- ☒ September 30, 2010.
- 3.19 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data recorded in the Fort Lauderdale/Hollywood International Airport Weather Station.

**ARTICLE 4 - FUNDING AND METHOD OF PAYMENT AND
PROVISIONS RELATING TO THE USE OF THE FUNDS**

- 4.1 The maximum amount payable by COUNTY under this Agreement shall be Twenty-Four Thousand, Two Hundred and Seventy-Five Dollars (\$24,275).
- 4.2 COUNTY agrees to reimburse SUBGRANTEE for the Project expenses incurred as provided for in Exhibit "B," attached hereto, provided a suspension of payment as provided for within this Agreement has not occurred, and provided further that SUBGRANTEE complies with the procedures for invoices and payments as set forth in this Article.
- 4.3 SUBGRANTEE shall invoice COUNTY monthly using Exhibit "E," Request for Payment, on the following basis:
 - 4.3.1 SUBGRANTEE shall provide COUNTY with an executed original of any contracts or subcontracts authorizing the work to be done on the Project.
 - 4.3.2 SUBGRANTEE shall provide COUNTY with documentation of leveraging which has occurred during each month.
 - 4.3.3 SUBGRANTEE shall submit a certified copy of the purchase order authorizing the services for which it is invoicing.
 - 4.3.4 If SUBGRANTEE has awarded a contract to an independent contractor to perform Project services, SUBGRANTEE shall submit to COUNTY a certified copy of the contractor's invoice stating the services rendered and the date the services were rendered.
 - 4.3.5 SUBGRANTEE's administrator or the administrator's authorized representative shall certify that the work that is being invoiced has been completed.
 - 4.3.6 In addition, SUBGRANTEE shall provide COUNTY with Monthly Progress Reports as provided in Exhibit "D," attached hereto and made a part of this Agreement.
 - 4.3.7 SUBGRANTEE shall disclose to COUNTY any and all third party funding, whether public or private, for the Project. No COUNTY funding shall be used to supplant existing third party funding.
- 4.4 Upon receipt of invoices, reports and other materials as described by Section 4.3, the Division shall audit such bid awards, contracts, reports and invoices to determine whether the items invoiced have been completed and that the invoiced items are proper for payment.
- 4.5 Upon determination by the Division that the services or material invoiced have been received or completed, the Division shall make payment to SUBGRANTEE the amount it determines, pursuant to the audit, to be payable. Payment for travel expenses, if any, shall be made in accordance with COUNTY guidelines for travel reimbursement.
- 4.6 For purposes of this section, invoices, reports and other materials as described in Section 4.3, shall not be honored by COUNTY if received later than sixty (60) days after expiration or termination of this Agreement; however, invoices for impact fees will be honored by COUNTY up to twelve (12) months after expiration or termination of this Agreement.
- 4.7 SUBGRANTEE agrees to notify the Division at least forty-eight (48) hours in advance of the date that work on the Project will be initiated in order that on-site inspections may be conducted by COUNTY.

- 4.8 SUBGRANTEE agrees to expend the funds allocated to the Project by September 30, 2010. All funds not expended within the term of this Agreement shall remain in the custody and control of COUNTY.
- 4.9 The parties hereby agree that the following events are sufficient cause for suspension of payments. Such events include but are not limited to:
- 4.9.1 Ineligible use of CDBG Funds;
 - 4.9.2 Failure to comply with the terms of this Agreement;
 - 4.9.3 Failure to submit reports as required including a favorable audit report; and
 - 4.9.4 Submittal of incorrect or incomplete reports in any material respect.
- 4.10 *Reversion of assets.* upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:
- 4.10.1 (i) Used to meet one of the national objectives in §570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or (ii) Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

ARTICLE 5 - LIABILITY

SUBGRANTEE agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

ARTICLE 6 - INSURANCE

6.1 The Parties hereto acknowledge that they are self-insured governmental entities that are subject to the limitations of Section 768.28, Florida Statutes and as may be amended from time to time. Each of these entities agree that they have instituted and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28 Florida Statutes, as may be amended from time to time, including Worker's Compensation in accordance with Chapter 440, Florida Statutes, as may be amended from time to time, including Employer's liability with a minimum of \$100,000. Nothing herein is intended to serve as a waiver of each party's sovereign immunity. Each will provide each other with written verification of liability protection in accordance with state law prior to final execution of this Agreement, upon request.

In the event SUBGRANTEE elects to purchase excess liability coverage, the Broward County Board of County Commissioners shall be named as an additional insured under said policy and COUNTY shall be notified of said coverage and provided a copy of same.

At a minimum, SUBGRANTEE shall maintain Workers Compensation and Employers Liability coverage. Workers' Compensation insurance shall apply for all employees in compliance with Chapter 440, Florida Statutes, as amended from time to time, "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include Employers' Liability with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) each accident, Five Hundred Thousand Dollars (\$500,000.00) each employee and One Hundred Thousand Dollars (\$100,000.00) each disease. If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

- 6.2 Improvements on SUBGRANTEE's Property. SUBGRANTEE shall keep the real property improvements now existing or hereafter erected on its Property insured against loss by fire, hazards and such other hazards as COUNTY's Risk Manager may require and in such amounts and for such affordability, loan or restriction periods as COUNTY may require.

6.3 Insurance Requirements for SUBGRANTEE's Contractor(s).

- 6.3.1 In the event SUBGRANTEE elects to enter in an agreement with a Contractor(s) to perform work/activities for the Project referenced herein, SUBGRANTEE agrees to include in its contract with the successful Contractor(s) the requirements set forth below in favor of COUNTY in addition to any SUBGRANTEE requirements and SUBGRANTEE further agrees to provide COUNTY, prior to commencement of any activities, Certificates of Insurance evidencing compliance with the following requirements:

CONTRACTOR agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as CITY's or COUNTY's review or acceptance of insurance maintained by CONTRACTOR is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by CONTRACTOR under this Agreement.

- a. Commercial General Liability: CONTRACTOR agrees to maintain Commercial General Liability coverage at a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) Each Occurrence, Five Hundred Thousand Dollars (\$500,000.00) Aggregate. CONTRACTOR agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, Contractual Liability or Cross Liability. Coverage must also include Premises and/or Operations Coverages.
- b. Business Automobile Liability: CONTRACTOR agrees to maintain Business Automobile Liability coverage at a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) Each Occurrence. Coverage shall include liability for Owned, Non-Owned, Hired and Any Auto if applicable.
- c. Worker's Compensation Insurance and Employers Liability: CONTRACTOR agrees to maintain Worker's Compensation Insurance and Employers Liability Insurance. Note: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement.
- d. Property (Installation) Floater shall be maintained in force, at CONTRACTOR's expense, covering labor, materials and equipment to be used for completion of the completion of the work performed under this contract against all risks of direct physical loss for an amount equal to the full amount of the contract

improvements. The coverage shall be "All Risk" coverage including installation and transit for One Hundred Percent (100%) of the "installed replacement cost value," covering COUNTY as a named insured, with a deductible of not more than Ten Thousand Dollars (\$10,000.00) each claim.

- e. Additional Insured: CONTRACTOR agrees to endorse CITY and COUNTY as additional insured with either a CG 2020 Additional Insured -- Owners, Lessees, or Contractors or CG 2026 Additional Insured -- Owners, Lessees, or Contractors --Scheduled Person Organization endorsement, or similar endorsements, to the Commercial General Liability. The additional insured shall read "-----, Florida" (name of Subgrantee) and "Broward County Board of County Commissioners, Florida."
- f. Waiver of Subrogation: CONTRACTOR agrees by entering into this Contract to a Waiver of Subrogation in favor of CITY and COUNTY for each required policy herein. When required by the insurer, or should a policy condition not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others or its equivalent.
- g. Certificates of Insurance: CONTRACTOR agrees to provide CITY a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect.

- 6.3.2 In the event of loss, SUBGRANTEE shall give prompt notice to the insurance carrier and COUNTY. COUNTY may make proof of loss if not made promptly by SUBGRANTEE.
- 6.3.3 Unless the Parties otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and COUNTY's interest is not thereby impaired. If such restoration or repair is not economically feasible or if COUNTY's interest would be impaired, the insurance proceeds shall be applied to the sums contemplated in this Agreement, with the excess, if any, paid to SUBGRANTEE. If the Property is abandoned by SUBGRANTEE or if SUBGRANTEE fails to respond to COUNTY within thirty (30) days from the date notice is mailed by COUNTY that the insurance carrier offers to settle a claim for insurance benefits, COUNTY is authorized to collect and apply the insurance proceeds at COUNTY's option either to restoration or repair of the Property or to the sums contemplated under this Agreement.
- 6.3.4 Such policy or policies shall be without any deductible amount and shall be issued by approved companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County, Florida. SUBGRANTEE shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds.
- 6.3.5 SUBGRANTEE shall furnish to COUNTY Certificates of Insurance or endorsements evidencing the insurance coverage specified in this Section prior to beginning performance of work under this Agreement.
- 6.3.6 If the Project involves construction of any structure on SUBGRANTEE's property, SUBGRANTEE shall require its Contractor to provide Builder's Risk in the amount of One Hundred Percent (100%) of replacement value of the completed structure. Such Builders Risk policy shall be all risk form with deductible not to exceed Ten Thousand Dollars (\$10,000.00) each claim and loss payable clause to include Broward County.

- 6.3.7 All policies must be endorsed to provide COUNTY with at least thirty (30) days notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the required term, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

ARTICLE 7 - ASSURANCES

- 7.1 SUBGRANTEE agrees that the Assurances provided by SUBGRANTEE in this Article shall survive the expiration or earlier termination of this Agreement.
- 7.2 SUBGRANTEE agrees to comply with the provisions of Section 102, Executive Order 11246, incorporated herein by reference, and with the guidelines for applicants on equal opportunity obligations for CDBG Funds in regard to construction contracts.
- 7.3 SUBGRANTEE agrees to submit written notification to the Division of all prebid and preconstruction meetings at least two (2) weeks prior to the actual date of the meetings.
- 7.4 SUBGRANTEE agrees to comply with the provisions outlined in 24 C.F.R., Part 135 which implements Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U. S. C. 1701u).
- 7.5 SUBGRANTEE agrees to comply with all applicable federal, state and county laws, ordinances, and codes and regulations. Any conflict or inconsistency between the above federal, state or county guidelines and regulations and this Agreement shall be resolved in favor of the more restrictive regulations.
- 7.6 SUBGRANTEE agrees to act in accordance with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides, in part, that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUBGRANTEE receives federal financial assistance and will immediately take any measures necessary to effectuate this Agreement. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to SUBGRANTEE, this assurance shall obligate SUBGRANTEE or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
- 7.7 SUBGRANTEE agrees, if applicable, to inform affected persons of the benefits, policies, and procedures provided for under Rules and Regulations of H.U.D.
- 7.8 SUBGRANTEE agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other associates.
- 7.9 SUBGRANTEE agrees further that it shall be bound by the standard terms and conditions used in the H.U.D. grant agreements and such other rules, regulations or requirements as H.U.D. may reasonably impose, in addition to the aforementioned Assurances provided at, or subsequent to, the execution of this Agreement, by the parties hereto.
- 7.10 If applicable, SUBGRANTEE agrees to carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and assure that replacement housing will be available in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin pursuant to the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

- 7.11 SUBGRANTEE agrees to comply with the requirements and standards of OMB Circular A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments," and 24 C.F.R. 85, incorporated herein by reference.
- 7.12 SUBGRANTEE agrees to incorporate COUNTY's Small Disadvantaged Business Enterprises Affirmative Action Program requirements and any other applicable provisions of the "Broward County Business Opportunity Act of 2004" (Ord. No. 2004-07, Section 2, 4-13-04) within all contracts awarded by SUBGRANTEE pursuant to this Agreement covering contracts at a minimum of Two Hundred Fifty Thousand Dollars (\$250,000.00) and H.U.D. regulations for all contracts of Ten Thousand Dollars (\$10,000.00).
- 7.13 SUBGRANTEE agrees to incorporate COUNTY's Resolution 83-1936 related to First Source Hiring Agreement Requirements within all contracts awarded by SUBGRANTEE pursuant to this Agreement.

☐ check if Section 7.14 is applicable

- 7.14 SUBGRANTEE agrees to comply with the following requirements as they relate to acquisition, lease, sublease, and disposition of real property.
 - 7.14.1 Real property acquired utilizing CDBG Funds shall be subject to a Mortgage and Promissory Note, in favor of COUNTY as Mortgagee, in substantially the forms to be provided by COUNTY to SUBGRANTEE. Upon execution of the Mortgage and Promissory Note by SUBGRANTEE, COUNTY shall record same, at SUBGRANTEE's expense, in the Public Records of Broward County, Florida, prior to the disbursement of any funding. Failure to use the property for the purpose(s) intended and pursuant to the terms within this Agreement shall result in breach of said Mortgage and remedies pursuant to same in favor of COUNTY.
 - 7.14.2 Before entering into a lease or sublease with a third party, SUBGRANTEE shall notify the Division in writing of its intent to enter into a lease or sublease, provide a copy of the proposed lease or sublease and obtain the Division's consent.
 - 7.14.3 Property acquired through a CDBG funded Project shall be used for the original approved purpose and SUBGRANTEE shall demonstrate significant progress within twelve (12) months of closing on such property. In the event such progress is not evidenced nor commenced within said twelve (12) months of closing, SUBGRANTEE hereby agrees to transfer ownership of the property acquired with CDBG Funds to COUNTY, if COUNTY so requests in writing.
 - 7.14.4 All real property transferred to COUNTY's ownership as a result of the aforementioned deficiency, lack of significant material progress, or real property returned as a result of expiration and subsequent termination of this Agreement, shall be used by COUNTY at its discretion for reallocation to other eligible CDBG activities.
 - 7.14.5 Real property acquired utilizing CDBG Funds which are used for the purpose of housing construction shall be deeded to home buyers at no cost to the home buyer. Any income realized as a result of the disposition of property by SUBGRANTEE shall be returned to COUNTY, unless otherwise provided for by written agreement.
 - 7.14.6 Any regulations, policies, procedures, or requirements governing the acquisition, use and disposition of real property including, but not limited to, the Uniform Relocation and Real Property Acquisition Policies Act, incorporated herein by reference, shall be followed and

provisions of said regulations, policies, procedures and requirements shall be met.

- 7.14.7 The income of persons benefiting from acquisition of real property used for housing shall not exceed H.U.D. Section 8 guidelines unless written authorization is given by the Division.
- 7.14.8 Proceeds from the sale of real property purchased in whole or in part with CDBG Funds shall be used for the originally authorized purposes as long as needed for that purpose(s), and SUBGRANTEE shall not dispose of or encumber its title or other interests, consistent with 24 C.F.R. 85.31.
- 7.14.9 Method of transfers of real property acquired with or improved by use of CDBG Funds shall be accomplished after written approval by the Director of the Housing Finance and Community Development Division.
- 7.15 Real property, equipment and supplies acquired with CDBG funds and no longer needed for the originally authorized purpose shall be disposed of in the manner authorized by the Director of the Housing Finance and Community Development Division and consistent with 24 C.F.R. 85 after SUBGRANTEE has requested disposition instructions.
- 7.16 In instances where there is construction work of over Two Thousand Dollars (\$2,000.00) financed in whole or part with CDBG Funds under this Agreement, SUBGRANTEE agrees to adhere to the Davis-Bacon Act, 40 U.S.C. 276a-276a-5, as amended, which requires all laborers and mechanics working on the Project be paid not less than prevailing wage rates as determined by the Secretary of Labor.
- 7.17 In instances where SUBGRANTEE is seeking to use CDBG Funds for payment of impact fees, SUBGRANTEE must attempt to secure a waiver of such impact fees. If SUBGRANTEE is unsuccessful in obtaining a waiver, SUBGRANTEE must submit to the Division documentation reflecting SUBGRANTEE's unsuccessful efforts prior to utilization of CDBG Funds for payment of impact fees.
- 7.18 SUBGRANTEE agrees that CDBG Funds shall not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.
- 7.19 SUBGRANTEE agrees to administer, in good faith, a policy designed to assure a workplace free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.
- 7.20 SUBGRANTEE agrees that applicants for rehabilitation assistance, tenants in housing being rehabilitated and purchasers of H.U.D. associated housing will be provided with information concerning the dangers of Lead-Based Paint.
- 7.21 SUBGRANTEE agrees that:
 - 7.21.1 No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
 - 7.21.2 If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative

agreement, the undersigned shall complete and submit COUNTY's Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

7.21.3 SUBGRANTEE shall assure that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- 7.22 SUBGRANTEE agrees to act in accordance with Sections 503 and 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 in addressing the problem of discrimination against individuals with disabilities in such areas as employment, housing, public accommodations, education and transportation.
- 7.23 In accordance with Section 519 of Public Law 101-144 and Section 104 (f) of the Federal Act (the H.U.D. Appropriations Act), SUBGRANTEE certifies that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations.
- 7.24 SUBGRANTEE shall comply with Title I and Title II of the ADA regarding nondiscrimination on the basis of disability in employment and in state and local government services, in the course of providing services funded in whole or in part by COUNTY.

ARTICLE 8 - FINANCIAL RESPONSIBILITY

- 8.1 SUBGRANTEE gives COUNTY, H.U.D., and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents relating to the Project.
- 8.2 SUBGRANTEE agrees to comply with the requirements and standards of OMB Circular A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments" and 24 C.F.R. 85, incorporated herein by reference.
- 8.3 SUBGRANTEE agrees that if it has caused any funds to be expended in violation of this Agreement, it shall be responsible to refund such monies in full to COUNTY from nonfederal resources, or if this Agreement is still in force, any subsequent request for payment shall be withheld by COUNTY.
- 8.4 SUBGRANTEE agrees to comply with the audit requirements of OMB Circular A-133, entitled "Audits of State and Local Governments and Non-Profit Organizations." The audit shall cover the entire operations of the local government or, at the option of that government, may cover only the department or agency that received, expended, or otherwise administered the federal funds. Such audit must be filed with COUNTY within one hundred eighty (180) days after the close of the fiscal year of the governmental entity. All grant funds from COUNTY should be shown via explicit disclosure in the annual financial statements or the accompanying notes to the financial statements.
- 8.5 SUBGRANTEE agrees and understands that all funding authorized through the Program shall be used only for eligible activities specifically outlined in this Agreement. In the event any of such funds are used for ineligible activities, such inappropriately used funds shall be repaid to COUNTY by SUBGRANTEE, and COUNTY, in its sole discretion, may reallocate the funds to other eligible CDBG projects.
- 8.6 Upon the prior written approval of COUNTY, program income generated as a result of receipt of CDBG Funds shall be used in one (1) of the following manners:

- 8.6.1 Added to funds committed to the Project by SUBGRANTEE and used proportionally to the original funding allocation to further eligible program objectives.
- 8.6.2 To finance the nonfederal share of the Project.
- 8.6.3 Only for eligible CDBG activities.
- 8.6.4 Returned to COUNTY upon written request of the Division.
- 8.7 SUBGRANTEE agrees to budget and expend all CDBG Funds in accordance with the Division's "Procedures Manual for Subrecipients."
- 8.8 SUBGRANTEE is required to and hereby agrees to account for program income related to the Project financed in whole or part with CDBG Funds.
- 8.9 Any real property under SUBGRANTEE's control that was acquired or improved in whole or in part with CDBG Funds shall be:
 - 8.9.1 Used to meet one of the National Objectives in 24 C.F.R. 570.208 until five (5) years after expiration of this Agreement; and
 - 8.9.2 Disposed of, if disposition occurs, in a manner that results in COUNTY being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to the expenditure of non-CDBG Funds for acquisition of or improvement to the property.
- 8.10 SUBGRANTEE acknowledges that this is a federally assisted Project. Failure to complete the Project in accordance with this Agreement, whether voluntarily or otherwise, constitutes a material breach of this Agreement, and any funds expended by COUNTY pursuant to this Agreement for the Project shall be repaid in full to COUNTY from nonfederal resources. SUBGRANTEE agrees that this provision shall survive the expiration or earlier termination of this Agreement.

ARTICLE 9 - TERM OF AGREEMENT

This Agreement shall commence on October 1, 2009, and shall end on September 30, 2010 unless terminated earlier or extended pursuant to the terms of this Agreement.

ARTICLE 10 - TERMINATION; DISQUALIFICATION

- 10.1 This Agreement is subject to the availability of funds. Should funds no longer be available, this Agreement shall terminate upon no less than twenty-four (24) hours notice in writing to SUBGRANTEE. Said notice shall be delivered by certified mail, return receipt requested, or in person, with proof of delivery. COUNTY shall be the final authority as to the availability of funds.
- 10.2 If, through any cause, SUBGRANTEE fails to commence work on the Project, as set forth in Exhibit "C," within ninety (90) days from the date of COUNTY's issuance of the Notice to Incur Costs, or fails to fulfill in timely and proper manner its obligations under this Agreement, or if SUBGRANTEE shall violate any of the covenants, agreements, or stipulations of this Agreement, COUNTY, at the discretion of and through the County Administrator, shall thereupon have the right to terminate this Agreement or suspend payment in whole or part by giving written notice to SUBGRANTEE of such termination or suspension of payment and specifying the effective date thereof, at least five (5) days before the effective date of termination or suspension. If payments are withheld, the Division shall specify in writing the actions that must be taken by SUBGRANTEE as a condition precedent to resumption of payments and should specify a reasonable date for compliance.

- 10.3 In the event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, capital equipment and any other assets secured by SUBGRANTEE with CDBG Funds under this Agreement shall be returned to COUNTY.
- 10.4 Notwithstanding the above, SUBGRANTEE shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by SUBGRANTEE, and COUNTY may withhold any payments to SUBGRANTEE, for the purposes of setoff until such time as the exact amount of damages is determined.
- 10.5 In the best interests of the Program and in order to better serve the people in the target areas and fulfill the purposes of this Agreement, either party may terminate this Agreement upon giving thirty (30) days notice in writing of its intent to terminate, stating its reasons for doing so. In the event COUNTY terminates this Agreement, COUNTY shall pay SUBGRANTEE for documented committed eligible costs. The County Administrator is authorized to terminate this Agreement on behalf of COUNTY pursuant to this Section upon his or her determination that termination is in the best interests of COUNTY and the Program.
- 10.6 All requests for amendments to this Agreement must be submitted in writing to the Director of the Housing Finance and Community Development Division no less than ninety (90) days prior to the termination date of this Agreement.
- 10.7 If, in the opinion of the Division Director, SUBGRANTEE has violated the terms of this Agreement, the Division Director may bring the matter before the County Administrator for consideration.

ARTICLE 11 - NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR COUNTY:

Ralph Stone, Director
Broward County Housing Finance and Community Development Division
110 NE 3rd Street, Suite 300
Fort Lauderdale, Florida 33301

FOR SUBGRANTEE:

Ester Colon, Town Manager
Town of Lauderdale-By-The-Sea
Lauderdale-By-The-Sea, Florida 33308

ARTICLE 12 - MISCELLANEOUS

12.1 EEO COMPLIANCE

SUBGRANTEE shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, or sexual orientation (including but not limited to Broward County Code, Chapter 161/2) in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement. SUBGRANTEE shall include the foregoing or similar

language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

SUBGRANTEE shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. SUBGRANTEE shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, SUBGRANTEE shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, SUBGRANTEE represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). SUBGRANTEE hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from SUBGRANTEE all monies paid by COUNTY pursuant to this Agreement, and may result in debarment of SUBGRANTEE from COUNTY's competitive procurement activities.

- 12.2 **INDEPENDENT CONTRACTOR.** SUBGRANTEE is an independent contractor under this Agreement. Services provided by SUBGRANTEE shall be performed by employees of SUBGRANTEE and subject to supervision by SUBGRANTEE, and shall not be deemed officers, employees, or agents of COUNTY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of SUBGRANTEE, which policies of SUBGRANTEE shall not conflict with COUNTY, or State of Florida policies, rules or regulations relating to the use of CDBG Funds provided for under this Agreement.
- 12.3 **PRIOR AGREEMENTS SUPERSEDED.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 12.4 **AMENDMENTS.** COUNTY may, in its discretion, amend this Agreement to conform to changes in federal, state, local, and/or COUNTY directives and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Board of County Commissioners, except the County Administrator shall be authorized to execute amendments that change the term of the Agreement or that change the Project, so long as the Project consists of eligible activities under 24 C.F.R. Part 570. Except for the provisions as set forth herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. It is understood that COUNTY is responsible to H.U.D. for the administration of CDBG Funds and may consider and act upon reprogramming recommendations as proposed by its SUBGRANTEE's or the Division after appropriate referral to the County Administrator. In the event that COUNTY approves any modification, amendment, or alteration to the funding allocation, SUBGRANTEE shall be notified pursuant to Article 11 and such notification shall constitute an official amendment. The Division Director shall be authorized to approve line item changes to the budget information set out in Exhibit "B," provided such changes do not result in an increase in the CDBG Fund amount in Section 4.1 of this Agreement, and Exhibit "B," attached hereto.

- 12.5 **ASSIGNMENT.** SUBGRANTEE shall not transfer or assign the performance of services called for in this Agreement. However, this Agreement shall run to COUNTY or its successors.
- 12.6 **REPORTS, PLANS AND OTHER AGREEMENTS.** All reports, plans, surveys, information, documents, maps and other data procedures developed, prepared, assembled or completed by SUBGRANTEE for the purposes of this Agreement shall become the property of COUNTY without restriction, reservation or limitation of their use and shall be made available by SUBGRANTEE at any time upon request by COUNTY or Division. Upon completion of all work contemplated under this Agreement, copies of all of the above data shall be delivered to the Division Director upon his/her written request.
- 12.7 **CONFLICT OF INTEREST.** SUBGRANTEE covenants it shall comply with the requirements of 24 CFR Part 92 relative to the Conflict of Interest provisions and the definitions as to applicability contained in Part 92.2. Any possible conflicting interest on the part of SUBGRANTEE, its employees, or agents, shall be disclosed in writing to the Division. It shall not be deemed a conflict as long as all purchasing for consumables, capital equipment and services are obtained in conformance with Article 3. However, this paragraph shall be interpreted in such a manner so as not to reasonably impede the statutory requirements that maximum opportunity be provided for employment of and participation of Very Low, Low, and Moderate Income residents of the Project's target area.
- 12.8 **CONFLICTS.** Neither SUBGRANTEE nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with SUBGRANTEE's loyal and conscientious exercise of judgment related to its performance under this Agreement. SUBGRANTEE agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of COUNTY in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event SUBGRANTEE is permitted to utilize subcontractors to perform any services required by this Agreement, SUBGRANTEE agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.
- 12.9 **EXECUTION.** This document shall be executed in four (4) counterparts, each of which shall be deemed to be an original.
- 12.10 **CHOICE OF LAW; WAIVER OF JURY TRIAL.** Any controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.
- 12.11 **SEVERANCE.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or SUBGRANTEE elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 12.12 **LEGAL PROVISIONS DEEMED INCLUDED.** Each and every provision of any law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application

of either party this Agreement shall forthwith be amended to make such insertion.

- 12.13 **KNOWLEDGE AND COMPLIANCE WITH APPLICABLE LAWS.** SUBGRANTEE shall keep fully informed of all Federal and State laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement. SUBGRANTEE shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees.
- 12.14 **THIRD PARTY BENEFICIARIES.** Neither SUBGRANTEE nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 12.15 **WAIVER OF BREACH AND MATERIALITY.** Failure by COUNTY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. No waiver shall be effective unless it is in writing and signed by the party against whom it is asserted. A waiver of any provision of this Agreement or failure to perform any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any prior or subsequent failure to perform any term, covenant or condition of this Agreement and shall not be construed to be a modification of the terms of this Agreement. COUNTY and SUBGRANTEE agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.
- 12.16 **JOINT PREPARATION.** COUNTY and SUBGRANTEE acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations under this Agreement, and the preparation of this Agreement has been a joint effort of COUNTY and SUBGRANTEE and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- 12.17 **PRIORITY OF PROVISIONS.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 12 of this Agreement shall prevail and be given effect. In the event there is a conflict between any provisions set forth in this Agreement and a more stringent State or Federal provision which is applicable to any services performed under this Agreement, the more stringent State or Federal provision shall prevail.
- 12.18 **INCORPORATION BY REFERENCE.** The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated into and made a part of this Agreement. The Rule and Regulations of H.U.D. are incorporated herein by reference.
- 12.19 **USE OF TERMS.** All terms and words used in this Agreement, despite the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections and subparagraphs of such section unless the reference is made to a particular subsection or subparagraph of such section.
- 12.20 **CAPTIONS AND HEADINGS.** Captions and headings contained in this Agreement are for

convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.

- 12.21 **SUCCESSION OF AGREEMENT.** This Agreement and the rights and obligations contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, where permitted by this Agreement.
- 12.22 **SURVIVAL.** Either party's right to monitor, evaluate, enforce, indemnify and insure, audit and review, and any assurances and items of financial responsibility shall survive the expiration or earlier termination of this Agreement. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth herein shall survive termination or expiration of this Agreement and be enforceable.
- 12.23 **FURTHER ASSURANCE.** SUBGRANTEE and COUNTY agree to execute, acknowledge, deliver, and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it to carry out this Agreement and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.
- 12.24 **TIME IS OF THE ESSENCE.** For the purposes herein, the parties agree that time shall be of the essence of this Agreement and the representations and warranties solely made herein are all material and of the essence of this Agreement.
- 12.25 **WAIVER OF CLAIMS.** SUBGRANTEE hereby waives any claim against COUNTY, and its agents, servants and employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment of award in any suit or proceeding declaring this Agreement null, void or voidable, delaying the same or any part thereof, from being carried out.
- 12.26 **CUMULATIVE RIGHTS.** All rights and remedies of COUNTY hereunder or at law or in equity are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by COUNTY to promptly exercise any of its rights shall not operate to forfeit or be treated as a waiver of any such rights.
- 12.27 **SPECIFIC PERFORMANCE.** SUBGRANTEE agrees that in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of competent jurisdiction.
- 12.28 **UNCONTROLLABLE FORCES.** Neither COUNTY nor SUBGRANTEE shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 12.29 **COMMUNITY DISADVANTAGED BUSINESS ENTERPRISE ("CDBE").** CDBE is defined as a for-profit small business entity that meets eligibility criteria as outlined in the Community Disadvantaged Business Enterprise Act of 2007. The CDBE Program, which is implemented under COUNTY's Community Disadvantaged Business Enterprise Act of 2007, referred to as the "Act," provides for the establishment and implementation of CDBE participation goals, initiatives, and other opportunities for COUNTY contracts. To qualify as a CDBE business, a firm must meet

the criteria and eligibility requirements of Broward County's CDBE Program and must be certified by Broward County's Small Business Development Division. (This Agreement, however, does NOT have assigned CDBE goals for the utilization of eligible economically disadvantaged business enterprises).

COUNTY and SUBGRANTEE agree that contractor and vendor awards to CDBEs are crucial to the achievement of COUNTY's CDBE participation objectives. Although this Agreement does NOT have assigned CDBE goals, SUBGRANTEE agrees that wherever possible, every effort will be made to utilize the services of Broward County-certified CDBE firms and SUBGRANTEE shall include this provision in any subcontract it enters into pursuant to this Agreement.

- 12.30 EXECUTION AUTHORITY. The individual executing this Agreement on behalf of SUBGRANTEE personally warrant that he or she has full authority to execute this Agreement on behalf of SUBGRANTEE.
- 12.31 MULTIPLE ORIGINALS. Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY, through the BROWARD COUNTY ADMINISTRATOR, authorized to execute same by resolution of the Board of County Commissioners, and TOWN OF LAUDERDALE-BY-THE-SEA, signing by and through its TOWN MANAGER, duly authorized to execute same.

COUNTY

WITNESSES:

Signature

Print Name

Signature

Print Name

Approved as to Insurance
Requirements:

By: _____
Risk Management Division

BROWARD COUNTY, through the
BROWARD COUNTY ADMINISTRATOR

By _____
County Administrator

____ day of _____, 20____.

Approved as to form by
Office of County Attorney
Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
A. Denise Sagerholm, ESQ. Date
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF LAUDERDALE-BY-THE-SEA FOR
SENIOR CENTER ACTIVITIES AND OPERATION IN THE AMOUNT OF \$24,275 PROVIDING FOR
FUNDING AND ADMINISTRATION OF 35th YEAR COMMUNITY DEVELOPMENT BLOCK GRANT
PROGRAMS

SUBGRANTEE

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

By: Jane White
City Clerk

By: Ester Colon
Signature

Ester Colon, Town Manager
Print Name and Title

20 day of October, 2009

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____
City Attorney

STATE OF FLORIDA)

SS.

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 30 day of October, 2009, by
Jane White, Esther Colon as Town Clerk, Town Manager of
Town of Lauderdale-By-The-Sea. He or she is personally known to me or has
produced _____ as identification and who did take an oath.

N. A. Smith
Notary Public, State of Florida
Commission No. _____

My commission expires:

#06-051.01
35th YRCDBGGOVT
04/26/07

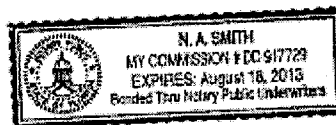


EXHIBIT "A"

PROJECT DESCRIPTION

Project Name:

Senior Center Activities and Operation

Project Description:

The Senior Center Activities Project will provide activities for seniors including computer classes, drawing and water color classes, tap and line dancing, beginning and intermediate bridge classes, exercise and yoga classes. A provider will be contracted to provide the activities for seniors who are 60 years and older.

As of September 30, 2008, activity enrollment is 5,465 and there were 414 seniors registered in the Senior Center Programs. Total scheduled class activities last fiscal year was 972.

One of the methods that will be used by the provider to measure participation is to count the numbers of seniors who participate in activities. The goal each month is to serve (80) clients and when registering for programs, seniors must show proof of residency.

This project is to provide supportive services for Limited Clientele located at the Jarvis Hall, 4505 Ocean Drive, Lauderdale-By-The-Sea, Florida, 33308.

CDBG HUD National Objective: 570.208(a) (2) Limited Clientele

EXHIBIT "B"

BUDGET TABLE/COSTS FOR PROJECT

Each cost category below reflects the proposed amount necessary to complete the project by funding source(s).

Funding Sources					
Cost Category		(1) CDBG	(2)	(3)	Total
A.	Personnel	\$			\$
B.	Fringe Benefits	\$			\$
C.	Travel	\$			\$
D.	Equipment	\$			\$
E.	Supplies	\$			\$
F.	Contractual Services	\$24,275	\$33,475		\$57,750
G.	Construction	\$			\$
H.	Other	\$		\$28,675	\$28,675
I.	Total	\$24,275	\$33,475	\$28,675	\$86,425

EXHIBIT "B"
Continued

BUDGET NARRATIVE

The budget narrative statements below provide a detailed justification for each cost category shown in the budget table for both CDBG and Non-CDBG funding sources utilized in financing the project.

CDBG Funding Source

The CDBG Funding Source will assist the Town of Lauderdale-By-The-Sea to contract a provider to administer the activities of the Senior Center which will cost the Town \$57,750.00 annually.

CDBG \$24,275.

Non-CDBG Funding Source(s)

The Town of Lauderdale-By-The-Sea will contract a provider to administer the activities of the Senior Center.

General Fund \$33,475.

The Town of Lauderdale-By-The-Sea will provide suitable space and use of existing resources to provide classes and activities. Use of the space to conduct these classes and activities will be held approximately six hours per day, five days per week throughout the year. Utilities, maintenance and insurance will also be provided.

General Fund \$28,675.

EXHIBIT "B"
(Cont.)

Allowable Cost for U.S. HUD Share of Budget

Federal cost principles for grants and contracts with state and local governments are stated in OMB Circular A-87, Cost Principles for State and Local Governments. This document is an extensive and somewhat complicated series of principles governing the allowability of various types of costs under federal grants and contracts. General information concerning the cost principles is summarized below:

The following types of costs are specifically unallowable:

- (A) Advertising costs other than those associated with recruitment of personnel and the solicitation of bids for goods and services.
- (B) Bad debts.
- (C) Contingencies.
- (D) Contribution and donations.
- (E) Entertainment.
- (F) Fines and penalties.
- (G) Interest.
- (H) Losses on other grants or contracts.

Most other categories of cost are generally allowable under the cost principles provided the costs are allowable and reasonable. General comments on individual cost elements are listed below:

Salary costs are generally allowable provided they are based on actual current salaries adjusted for any anticipated cost-of-living or merit increases during the grant period. Salary costs for unidentified new employees must be consistent with the organization's overall employee compensation structure. The organizational compensation policy should not change as a result of obtaining a federal grant.

Fringe Benefit costs such as pay for vacations, holidays, sick leave, employee insurance, and unemployment benefits are allowable to the extent required by law or established organizational policy.

EXHIBIT "B"
(Cont.)

Travel costs consistent with established organizational policy are generally allowable. The difference between first class and coach air fare is specifically unallowable. In the absence of established organizational travel policy, it is a good practice to adopt policies consistent with the federal travel regulations.

Equipment costs should be based on the least cost method of acquisition (rent, purchase, lease with option to buy) over the grant period as demonstrated by competitive bidding. Equipment costs are only allowable to the extent the equipment is directly necessary to accomplish the grant. The cost of equipment not fully utilized under the grant must be allocated to other organization costs to assure a fair share distribution. Whenever practical, used equipment should be considered in meeting equipment needs.

Material cost directly associated with the project is allowable. Prices must generally be justified through competitive bids except for nominal purchases.

Subcontracts must be awarded on a competitive basis except in extraordinary circumstances. The same principles applicable to individual cost principles for grantees are generally applicable cost-reimbursement type subcontracts under grants.

Consultant agreements should include a certification by the consultant that the consultant rate is equal to or less than the lowest rate the consultant accepts for comparable work. Additionally the Congress has prohibited the salary component of consultant fees under H.U.D. Grants not to exceed the applicable approved rate schedule.

Construction costs include construction of new buildings, structures, or other real property as well as alteration or repair of existing structures. Construction costs should be supported by detailed cost estimates and competitive bidding. Consult with the Housing and Community Development Compliance Officer on applicability of the Davis-Bacon Wage determination to this project.

Other costs include all types of direct costs not specified above. Normally, such costs include space, telephone, utilities, printing, and other basic operating expenses.

Leverage is that which the municipality or non-profit organization brings to the project. It may be in the form of services or contributed operating expenses (in-kind contributions) or cash support from the organization itself or from other sources.

Exhibit "C"

Project Schedule/Timeline Table

The table below lists the main work tasks required to complete project objectives before the term of the agreement expires.

Work Task	Start-Up Date	Date of Completion
Schedule classes and activities	October 1, 2009	September 30, 2010
Record registration information	October 1, 2009	September 30, 2010
Record participation in activities	October 1, 2009	September 30, 2010
Create volunteer opportunities, Request & Identify Participants	October 1, 2009	September 30, 2010

EXHIBIT "D"**MONTHLY PROGRESS REPORT**

Reporting Period: _____

Date Report Prepared: _____

A. Project Information:

Agency Name	Town Of Lauderdale-By-The-Sea
Person Preparing the Report	Kaola King
Job Title	Finance-Budget Director
Signature	
Project Name	Town of Lauderdale-By-The-Sea Senior Center Activities
Project Start-Up Date	October 01, 2009
Project Completion Date	September 30, 2010
Amended Completion Date (if applicable)	

B.1 Project Cost

		Funds Expended to Date	Percentage
Total Project	\$86,425		
CDBG Funding	\$24,275		
Other Funding (specify source below)	\$62,150		

B.2 Declaration of Agency Budget Changes

Program Income: _____ N/A _____

Source of Program Income: _____ N/A _____

EXHIBIT "D"
(Cont.)

B.3 Other Grant Awards

Date(s): N/A Dollar Amount(s): _____

Funding Source(s): _____ Funding Contract Person(s): _____

B.4 Describe attempts to secure additional funding:

The Town of Lauderdale-By-The-Sea is providing additional funding for successful completion from the General Fund.

B.5 Percent of Project completed to date: ____%

B.6 Anticipated Changes in Staffing:

1. Office Hours: N/A
2. Resignations: N/A
3. Part-time or Full-time Employee(s):

C.1 Brief Project Description & Project Location (if applicable, include homeowner's name and address, general scope of work performed, and associated expenses):

The Senior Center is located at Jarvis Hall, 4505 Ocean Drive, in the Town of Lauderdale-By-The-Sea. Jarvis Hall is part of the municipal complex. Goodwill Industries of Broward County provides daily programs and activities five days a week for six hours each day. There are computer classes ranging from beginner to the more advanced. There are classes in painting, tap dancing and safe driving. There are weekly sessions of yoga, and relaxation techniques and beginning and advanced bridge. Group discussions are held on a variety of topics such as current events, travel and finances.

C. 2. Describe specific work tasks & status completed this month:

Work Tasks	Status (i.e., underway, completed)
Schedule classes and activities	
Record registration information	
Record participation in activities	
Create volunteer opportunities, Request & Identify Participants	

EXHIBIT "D"
(Cont.)

C.3. Describe success or problems encountered with the project:

Successes include a steady increase in the computer classes and daily activities.

C.4. Anticipated problems or concerns with project. Please identify technical assistance needed and/or requested from Housing and Community Development staff.

There are no anticipated problems or concerns with the Senior Center activities program. It continues to be one of the most popular programs the Town of Lauderdale-By-The-Sea offers its citizens.

C.5. Anticipated advertisements and/or other contractual services. If so, has the Housing and Community Development staff been advised and appropriate steps taken to assure compliance?

N/A

C.6. If applicable, please complete the following Direct Benefit Report Form on all program participants.

Page 3 of 7

Exhibit "D"
(C.6 – Cont.)

Indicate persons or households. Only unduplicated counts should be given

Total number
served
This Month

Total number
served
year to date

Ethnicity

Hispanic
Non-Hispanic

1. Total

Racial Data

**#
Hispanic**

11. White
12. Black/African American
13. Asian
14. American Indian/Alaskan Native
15. Native Hawaiian or other Pacific Islander
16. American Indian/Alaskan Native & White
17. Asian & White
18. Black/African American & White
19. American Indian/Alaskan Native & Black/African American
20. Other Multi-Racial

2. Total

Income Data

Very Low Income <30% of area median
Low Income <50% of area median
Moderate Income <80% of area median
Non-Low Moderate Income

**income levels must equal persons benefiting*

3. Total

Other Demographic Data

Households
Persons
Homeless
Female Head of Household
Disabled Persons Assisted
Elderly Persons Assisted
Census Tract served

Exhibit "D"
(C.6 - Cont.)

Applicable if implementing one of the following activities

Public Services / Public Facilities and Improvements

Total number
this quarter

Total number
year to date

Public Services: Of the persons assisted

Number that have new access to this service or benefit

Number that have improved access to this service or benefit

Number that receive a service or benefit that is no longer
substandard

1. Total

Public Facilities or Infrastructure Improvements

Number that have new access to this type of public facility or
infrastructure improvement

Number that have improved access to this type of public facility or
infrastructure improvement

Number served by public facility or infrastructure that is no
longer substandard

2. Total

Overnight Shelter / Emergency Housing

Number of bed created in overnight shelter or other emergency
Housing

3. Total

Exhibit "D"
(C.6 – Cont.)

Applicable if implementing one of the following activities
Housing and Economic Development Data

Total number
this quarter

Total number
year to date

Rehab: Of the total owner units

Occupied by elderly
Units moved from sub-standard to standard (HQS or local code)
Units qualified as Energy Star
Units made accessible
Units brought into compliance with lead safety rules (24 CFR Part 35)

1. Total

1st Time Homebuyers: of total households

Number received housing counseling
Number downpayment assistance / closing costs

2. Total

Assistance to Businesses

Number of new businesses assisted
Number of existing business assisted

Number of existing businesses expanding
Number of existing businesses relocating

Number of businesses assisted with commercial façade treatment/
business building rehab

Number of businesses assisted that provide goods or services to
meet the needs of a service area, neighborhood or community

Women owned business

3. Total

Name of Each Business Assisted

DUNS #

N/A

*DUNS number required for each business

EXHIBIT "D"
(Cont.)

D. Program Objectives

* Work Tasks	Projected Yearly Total / Performance	Monthly Progress	Progress Yr-To-Date	Supporting Documentation
Record Class Activities	400			Monthly Class Activity Calendar
Record Registration Information	80			Monthly Registration Form
Record Participation in Activities	2,000			Monthly Participation Form
Record Volunteer Participation Hours	100			Monthly Volunteer Form

* Please list Work Tasks as listed in the agreement's Exhibit "C" (Project Schedule/Timeline Table).

EXHIBIT "E"
Municipal Subgrantees

**SUBGRANTEE'S
REQUEST FOR PAYMENT**

Community Development Block Grant Program
35th Year Funding

Contract Period October 01, 2009 to September 30, 2010

1. Project Name: Senior Center Activities Project			
2. Organization: Town of Lauderdale-By-The-Sea		Telephone Number: 954-776-0576	
3. Billing Number: #			
4. Billing Period Covered:			
5. % of Total Contract, Expended thru this Billing: %			
6. Cost Categories	Total Expenditures Up to Last Billing	Expenditures This Billing	Total Expenditures To Date
A. Project Costs			
Salary & Fringes			
Contractual			
Construction			
Other Project Costs			
Total Expenditures			
Funds Obligated: (By Funding Agreement)			
Balance			
B. In-kind			

Exhibit B

Sample Volunteer Sign-In Sheet

VOLUNTEER SIGN-IN/OUT SHEET

Event: **SENIOR CENTER**

Event Date:

Event Coordinator(s): **ARMILIO BIEN-AIME**

Location: SENIOR CENTER / JARVIS HALL

[illegible]

Event Coordinator Signature: _____

Date:

Armilio Bien-Aime